

**232.78 Temporary custody of a child pursuant to ex parte court order.**

1. The juvenile court may enter an ex parte order directing a peace officer or a juvenile court officer to take custody of a child before or after the filing of a petition under [this chapter](#) provided all of the following apply:

a. The person responsible for the care of the child is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under [this section](#), or there is reasonable cause to believe that a request for consent would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

b. The court has found that substantial evidence exists to demonstrate that the need for removal outweighs the potential harm removal of the child would cause the child, including but not limited to any physical, emotional, social, and mental trauma the removal may cause the child.

c. The court finds that the child's immediate removal is necessary to avoid imminent danger to the child's life or health. The circumstances or conditions indicating the presence of such imminent danger shall include but are not limited to any of the following:

(1) The refusal or failure of the person responsible for the care of the child to comply with the request of a peace officer, juvenile court officer, or child protection worker for such person to obtain and provide to the requester the results of a physical or mental examination of the child. The request for a physical examination of the child may specify the performance of a medically relevant test.

(2) The refusal or failure of the person responsible for the care of the child or a person present in the person's home to comply with a request of a peace officer, juvenile court officer, or child protection worker for such a person to submit to and provide to the requester the results of a medically relevant test of the person.

d. There is not enough time to file a petition and hold a hearing under [section 232.95](#).

e. The application for the order includes a statement of the facts to support the findings specified in paragraphs "a", "c", and "d".\*

2. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

3. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child care facility, a petition shall be filed under [this chapter](#) within three days of the issuance of the order.

4. The juvenile court may enter an order authorizing a physician or physician assistant or hospital to provide emergency medical or surgical procedures before the filing of a petition under [this chapter](#) provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under [this chapter](#) and hold a hearing as provided in [section 232.95](#).

5. The juvenile court, before or after the filing of a petition under [this chapter](#), may enter an ex parte order authorizing a physician or physician assistant or hospital to conduct an outpatient physical examination or authorizing a physician or physician assistant, a psychologist certified under [section 154B.7](#), or a community mental health center accredited pursuant to [chapter 230A](#) to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by [section 232.71B](#), provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child care facility under [this section](#).

c. There is not enough time to file a petition and to hold a hearing as provided in [section 232.98](#).

6. Any person who may file a petition under [this chapter](#) may apply for, or the court on its own motion may issue, an order for temporary removal under [this section](#). An appropriate

person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding [section 234.39](#) or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order.

7. Any order entered under [this section](#) authorizing temporary removal of a child must include all of the following:

a. A determination made by the court that continuation of the child in the child's home would be contrary to the welfare of the child. Such a determination must be made on a case-by-case basis. The grounds for the court's determination must be explicitly documented and stated in the order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determination shall not be a prerequisite to the removal of the child.

b. A determination made by the court that the necessity of the removal of the child from the child's home, due to an imminent risk to the child's life or health, is greater than the potential harm including but not limited to physical, emotional, social, and mental trauma the removal may cause the child.

c. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

8. a. If the juvenile court determines that the child should be temporarily removed from the child's home under [this section](#), the court shall consider placing the child in the custody of another parent of the child. If the juvenile court determines placing custody of the child with any of the child's parents is not in the child's best interests, the child's custody shall be transferred to the department for placement of the child in any of the following categories in the following order of priority:

(1) An adult relative of the child including but not limited to adult siblings and parents of siblings.

(2) A fictive kin.

(3) Any other suitable placement identified by the child's relatives.

(4) An individual licensed to provide foster care pursuant to [chapter 237](#). If the child is placed with a licensed foster care provider, the department shall assign decision-making authority to the foster care provider for the purpose of applying the reasonable and prudent parent standard during the child's placement.

(5) A group care facility, shelter care facility, or other residential treatment facility.

b. (1) If the court places custody of the child with the department pursuant to paragraph "a", the court may identify a category listed in paragraph "a" for placement of the child, but the department shall have the authority to select the specific person or facility within that category for placement, subject to court review at the request of an interested party.

(2) The court shall give deference to the department's decision for placement of a child. A party opposed to the department's placement of a child shall have the burden to prove the department failed to act in the child's best interests by unreasonably or irresponsibly failing to discharge its duties in selecting a suitable placement for the child.

c. A juvenile court shall not order placement of a child in a category listed in paragraph

“a”, subparagraph (2), (3), (4), or (5), without a specific finding that placement with a relative is not in the child’s best interests and shall provide reasons for the court’s finding.

[C79, 81, §232.78]

84 Acts, ch 1279, §9; 85 Acts, ch 173, §10, 11; 89 Acts, ch 230, §14; 94 Acts, ch 1172, §23; 97 Acts, ch 35, §11, 25; 98 Acts, ch 1190, §4 – 6; 99 Acts, ch 192, §33; 2000 Acts, ch 1067, §6, 7; 2001 Acts, ch 135, §12, 13; 2022 Acts, ch 1066, §31, 32; 2022 Acts, ch 1098, §24 – 26

Referred to in §232.44, 232.73, 232.79, 232.95, 232.98, 232.104, 233.2

\*Subsection 1, paragraph b amended, divided, and redesignated as paragraphs b and c by 2022 Acts, ch 1098, §24, and the inclusion of paragraph b may have been intended; corrective legislation is pending

Subsection 1, paragraph b amended, divided, and redesignated as paragraphs b and c and former paragraphs c and d redesignated as d and e

Subsection 4, unnumbered paragraph 1 amended

Subsection 5, unnumbered paragraph 1 amended

Subsection 7 amended

NEW subsection 8